

NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO DISMISS
November 3, 2022 12:28

By: JOSEPH E. SCHMANSKY 0071860

Confirmation Nbr. 2693837

WILLIS TABRON III

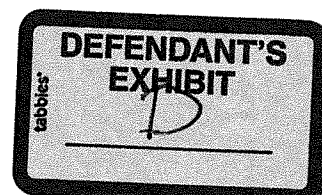
CV 22 969653

vs.

Judge: MAUREEN CLANCY

RALPH VALENTINO ET AL

Pages Filed: 4



IN THE COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO

WILLIS TABRON III,	:	
Plaintiff,	:	Case No. CV-22-969653
-vs-	:	The Honorable Maureen E. Clancy
RALPH VALENTINO, et al.,	:	
Defendants.	:	

**MOTION OF DEFENDANT, ROBERT BOLDIN, TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

Defendant, Robert Boldin ("Boldin"), comes before this Court to respectfully request that it dismiss this action against him pursuant to Rule 12(B)(1) of the Rules of Civil Procedure. This case involves claims for monetary damages against a State employee. Ohio law requires such claims to be brought exclusively before the Ohio Court of Claims, rather than Courts of Common Pleas. Therefore, this Court lacks subject matter jurisdiction over the purported claims Plaintiff, Willis Tabron, III ("Tabron"), alleges against Boldin.

Respectfully submitted,

/s/ *Joseph Schmansky*

Joseph E. Schmansky (0071860)
Senior Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3130
Telephone: (614) 629-8332
Email: joseph.schmansky@ohioago.gov
Counsel for Defendant, Robert Boldin

Memorandum in Support

A. Boldin should be dismissed from this case on the basis that this Court lacks subject matter jurisdiction

1. Standard of review

Boldin brings this Motion to Dismiss for lack of subject matter jurisdiction pursuant to Civil Rule 12(B)(1). Subject-matter jurisdiction involves a court's power to hear and decide a case on the merits. *Morrison v. Steiner*, 32 Ohio St. 2d 86, 290 N.E.2d 841, *syllabus* ¶1 (1972). In deciding a Rule 12(B)(1) motion, the Court must dismiss for lack of subject-matter jurisdiction if it finds the complaint fails to allege any cause of action cognizable in the forum. *State ex rel. Ohio Civil Service Employees Association v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478 ¶ 12, 56 N.E.3d 913.

2. Statement of facts

Tabron initiated this action by filing a Complaint against a number of parties, including Boldin. Of particular importance to this Motion, Tabron's Complaint alleges that "Boldin is a member of the Ohio Investigative Unit, and a sworn peace officer vested with the responsibility of enforcing Ohio law relative to alcohol, tobacco and food stamp fraud laws. *At all times relevant, Boldin was functioning as a law enforcement officer employed by the State of Ohio.*" *Complaint* ("Comp."), ¶5 (emphasis added). The Complaint further alleges that "Boldin under his authority as a member of the Ohio Investigative Unit commenced an undercover investigation of Plaintiff's business." *Comp.*, ¶9. Tabron then asserts causes of action for Illegal Search and Seizure, Malicious Prosecution, and Loss of Business Opportunities. *Comp.*, ¶¶ 41-43. Based on these claims, Tabron seeks solely monetary damages from Bolding and the other defendants. *Comp.*, *Prayer for Relief*, ¶¶ a-e.

3. Law and argument

At the outset, the Ohio Investigative Unit is a state agency created by the provisions of the Ohio Revised Code. O.R.C. § 5502.13 *et seq.* Because it is a state agency, the Ohio Court of Claims has exclusive subject matter jurisdiction over monetary claims for damages alleged against it. O.R.C. §§

2743.02 & 2743.03. This same rule applies equally as well to causes of action seeking monetary damages alleged against state employees. *Martin v. Mengel*, 10th Dist. Franklin Cty. Case No. 05AP-77, 2005-Ohio-3684 ¶6, 2005 Ohio App. LEXIS 3373 (July 21, 2005)(“It is well-established in Ohio that the state and its officers and employees are amenable to suit for money damages solely in the Ohio Court of Claims”) *citing Boggs v. State of Ohio*, 8 Ohio St.3d 15, 8 Ohio B. 84, 455 N.E.2d 1286 (1983).

Tabron’s Complaint seeks solely monetary damages for the claims he alleges against Boldin, an employee of the State of Ohio. The aforementioned standards require Tabron to bring his claims against Boldin before the Ohio Court of Claims and this Court lacks subject matter jurisdiction to consider them. Accordingly, it should dismiss Boldin from this case.

B. Conclusion

In view of the foregoing, Defendant, Robert Boldin, respectfully prays that this Court grant his Motion to Dismiss and dismiss him from this case.

Respectfully submitted,

/s/ *Joseph Schmansky*

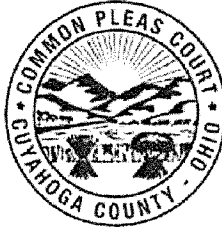
Joseph E. Schmansky (0071860)
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Columbus, Ohio 43215-3130
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Email: joseph.schmansky@ohioago.gov
Counsel for Defendant, Robert Boldin

CERTIFICATE OF SERVICE

I hereby certify that on this day, Thursday, November 3, 2022, a copy of the foregoing was filed with the Court and served upon Plaintiff by the Court's E-Filing system.

/s/ *Joseph Schmansky*

JOSEPH E. SCHMANSKY (0071860)
Senior Assistant Attorney General



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

NOTICE OF
November 3, 2022 14:54

By: JOSEPH E. SCHMANSKY 0071860

Confirmation Nbr. 2694136

WILLIS TABRON III

CV 22 969653

vs.

Judge: MAUREEN CLANCY

RALPH VALENTINO ET AL

Pages Filed: 1

IN THE COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO

WILLIS TABRON III,	:	
Plaintiff,	:	Case No. CV-22-969653
-vs-	:	The Honorable Maureen E. Clancy
RALPH VALENTINO, et al.,	:	
Defendants.	:	

**NOTICE OF SERVICE OF MOTION OF DEFENDANT, ROBERT BOLDIN, TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

CERTIFICATE OF SERVICE

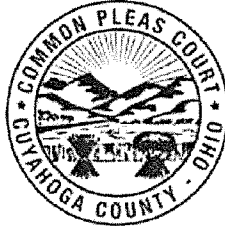
Counsel for Defendant, Robert Boldin, hereby certifies that on this day, Thursday, November 3, 2022, a copy of his Motion To Dismiss For Lack Of Subject Matter Jurisdiction was filed with the Court and served upon Plaintiff by regular mail to the following address:

Willis Tabron III
515 Euclid Avenue
Cleveland, Ohio 44114

Respectfully submitted,

/s/ *Joseph Schmansky*

Joseph E. Schmansky (0071860)
Senior Assistant Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3130
Telephone: (614) 629-8332
Email: joseph.schmansky@ohioago.gov
Counsel for Defendant, Robert Boldin



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

NOTICE OF APPEARANCE
November 8, 2022 12:17

By: JAMES R. RUSSELL 0075499

Confirmation Nbr. 2697551

WILLIS TABRON III

CV 22 969653

vs.

Judge: MAUREEN CLANCY

RALPH VALENTINO ET AL

Pages Filed: 2

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIS TABRON, III,)	CASE NO.: CV-22-969653
)	
Plaintiff,)	JUDGE MAUREEN CLANCY
)	
vs.)	
)	
RALPH VALENTINO, <i>et al.</i> ,)	
)	
Defendants.)	

NOTICE OF APPEARANCE OF COUNSEL

Now come J.R. Russell and Affan Ali, City of Cleveland Law Department, and submit notice to the Court and all parties that until further notice they shall serve as legal counsel on behalf of Defendant Ralph Valentino and Defendant City of Cleveland. All notices, pleadings, and other documents should be sent to J.R. Russell or Affan Ali, at the address listed below.

Respectfully submitted,

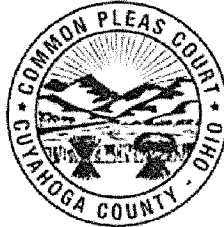
MARK D. GRIFFIN (0064141)
Director of Law

By: /s/ J.R. Russell, Jr.
James R. Russell, Jr. (0075499)
Affan Ali (0085698)
Assistant Directors of Law
City of Cleveland, Department of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
Tel: (216) 664-2800
Fax: (216) 664-2663
JRussell2@clevelandohio.gov
Attorneys for City of Cleveland, and Ralph Valentino

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically on the 8th day of November, 2022. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ J.R. Russell, Jr.
*Attorney for City of Cleveland and
Ralph Valentino*



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION FOR EXTENSION OF TIME
November 10, 2022 10:59

By: JAMES R. RUSSELL 0075499

Confirmation Nbr. 2699536

WILLIS TABRON III

CV 22 969653

vs.

Judge: MAUREEN CLANCY

RALPH VALENTINO ET AL

Pages Filed: 2

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIS TABRON, III,)	CASE NO.: CV-22-969653
)	
Plaintiff,)	JUDGE MAUREEN CLANCY
)	
vs.)	
)	
RALPH VALENTINO, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION FOR LEAVE TO PLEAD

Now comes Defendant City of Cleveland ("the City"), pursuant to Rules 4.7 and 6(B) of the Ohio Rules of Civil Procedure, and requests an additional twenty-eight (28) days to move, plead, or otherwise respond to the Complaint filed by Plaintiff Willis Tabron, II ("Plaintiff") filed on October 5, 2022. The City requests leave up to and including, at least December 8, 2022. It is respectfully submitted that the City was notified of Plaintiff's Complaint on October 13, 2022. The City's co-defendant, Defendant Ralph Valentino, was not yet formally served with the Complaint. Pursuant to Rule 4.7 of the Ohio Rules of Civil Procedure, both of the aforementioned defendants would formally waive service in exchange for 60 days of leave as provided by the Rule.

Further, the other improperly added defendant in this matter, Defendant Robert Boldin, filed a Motion to Dismiss for lack of subject matter jurisdiction. Especially in light of the fact of that pending motion, Plaintiff and the other defendants would suffer no prejudice if the City is granted additional time to move or plead. Therefore, the City requests leave, up to and at least until December 8, 2022, to move or plead in response to Plaintiff's Complaint.

Respectfully submitted,

MARK D. GRIFFIN (0064141)
Director of Law

By: /s/ J.R. Russell, Jr.
James R. Russell, Jr. (0075499)
Affan Ali (0085698)
Assistant Directors of Law
City of Cleveland, Department of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
Tel: (216) 664-2800
Fax: (216) 664-2663
JRussell2@clevelandohio.gov
Attorneys for City of Cleveland, and Ralph Valentino

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically on the 10th day of November, 2022. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ J.R. Russell, Jr.
Attorney for City of Cleveland and Ralph Valentino